

Application No. 09/644,676
Amendment dated March 26, 2004
In response to Office Action dated: September 26, 2003

Remarks

Applicant acknowledges that claims 7-16 are pending in the present application, of which claims 7 and 12 are independent claims.

Rejections Under 35 U.S.C. §§ 112 and 101

In the Office Action dated September 26, 2003, the Examiner rejected claims 1-16 under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-6 have been cancelled, so the rejections against them became moot.

The Examiner rejected claim 7 stating that "sticks are not cotton." Applicant respectfully traverse this rejection because "cotton stick" is a commonly used term describing a kind of disposable consumer or medical use sticks with tipped cotton. Therefore, the phrase "cotton sticks" in claim 7 is readily understandable to a person ordinarily skilled in the art, and is definite.

Claims 12-16 were rejected under both 35 U.S.C. § 112, paragraph 2 and § 101 because the claims provide the use of an ovulation-period-detecting reagent. These claims have been amended to provide a method for determining whether a subject is in the period of ovulation with steps involved in the process being set forth. Applicant respectfully submits that the present claims 12-16 meet the requirements of both 35 U.S.C. § 112, paragraph 2 and § 101, and are therefore proper claims.

Rejections Under 35 U.S.C. § 102

Claims 1 and 4-6 were rejected under 35 U.S.C. 102(b) as being anticipated by Foster (U.S.P.N. 3,473,738). These claims have been cancelled by this paper, and therefore the rejections have become moot.

Rejections under 35 U.S.C. § 103

Claim 3 has been cancelled, so the rejection against it has become moot.

The Examiner rejected claims 7-11 under 35 U.S.C. § 103(a) as being unpatentable over

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Foster in view of Jaumakais (U.S.P.N. 5,620,658). The Examiner also rejected claims 12-16 as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Foster. Applicants respectfully submits that presently pending claims 7-16 are patentable for the reasons provided below.

Foster discloses a method for detecting the fertile period of the female by contacting saliva with a solution essentially comprising a stable mannitol-peroxide complex and a color forming compound such as guaiac. In Foster, a composition made of four solutions is used for impregnating a filter paper for the test. See Foster, column 2, lines 10-31. The Office Action states that Foster discloses 1.5% by weight of hydrogen peroxide and 2.5% by weight of a color reagent.

The present claims 7 and 12 both require a first component containing a 5-8% by weight aqueous solution of a substance which can conduct a color reaction with hydrogen peroxide; and a second component of a 4-8% by weight aqueous solution of hydrogen peroxide. Foster does not disclose or suggest these claimed concentration ranges of the aqueous color reagent and hydrogen peroxide solutions. Besides this, Foster also does not teach or suggest: (1) the ratio of 10-20:1 between the first component and the second component; and (2) using a secretion from vagina of the subject to do the test. Other references cited by the Examiner also fail to teach or suggest these limitations in the present claims 7 and 12 that cannot be found in Foster. Therefore, claims 7 and 12 can neither be anticipated nor rendered obvious by Foster, and are thus allowable.

Moreover, the method and kit of the present invention surprisingly give a close to 100% accurate test result in a very short time (up to 30 seconds). The test paper of Foster can only gave a correlation above 82%. See Foster, column 2, lines 37-38. The result that the method and kit of the present invention can provide is unexpected and patentably superior to the test paper of Foster. Claims 7 and 12 are therefore not obvious over the prior art.

Claims 8-11 and 13-16 depend from claim 7 and 12, respectively, and as such, they are patentable at least for the same reasons as claims 7 and 12.

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35 U.S.C. § 132 (Amendments Supported)

The amendments to claims 7 and 12 are supported by the originally submitted specification on page 4. The amendments in this paper are therefore free of new matter

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Conclusion

In view of the above remarks, Applicant respectfully requests reconsideration and allowance of all pending claims (7-16).

A Petition for Three Month Extension of Time is submitted together with this paper, and the Commissioner is authorized to charge any required fees to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

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